REMARKS

Entry of this Amendment and reconsideration are respectfully requested in view of the amendments made to the claims and for the remarks made herein.

Claims 1-6 are pending and stand rejected

Claims 1 and 4 are independent claim.

Claims 1 and 4 have been amended. Claims 2 and 5 have been cancelled.

Claims 1-6 stand rejected under 35 USC 112, first paragraph as failing to comply with the enablement requirement. Claim 1 stand rejected under 35 USC 103(a) as being unpatentable over applicant's admitted prior art (AAPA in view of Yoshimura (USPPA 2004/0095812). Claims 3, 4, and 6 stand rejected as being unpatentable over AAPA in view of Yoshimura. Claims 2 and 5 are objected to as being unnecessary or required by the apparatus of claim 1.

With regard to the rejection of claims 1-6 under 35 USC 112, first paragraph, applicant respectfully disagrees with and explicitly traverses the rejection of the claims. However, in the interest of advancing the prosecution of this matter, applicant has elected to amend the independent claims to present the subject matter claimed in better form.

More specifically, claims 1 and 4 have been amended to further recite the determination of seamless play being based on a sequential numerical order of the sectors read from first and second layers. No new matter has been added. Support for the amendment may be found at least in cancelled claims 2 and 5. Although the Office Action refers to claims 2 and 5 as not being necessary, applicant submits that the ordering of the sectors between the first and second layer are considered a necessary part of the invention as is illustrated in the figures.

Based on the amendments to the claims, applicant submits that the claims provide adequate understanding of the invention claimed to enable one skilled in the art to practice the invention claimed.

With regard to the rejection of claim 1 as being unpatentable over AAPA in view of Yoshimura, applicant respectfully disagrees with and explicitly traverses the rejection of the claims. However, as discussed above, each of the independent claims have been amendment to present the invention claimed in better form.

AAPA discloses the standard method for providing seamless reproduction of data when data is read from a first layer and a second layer. To perform this seamless reproduction an indicator is provided in the sectors between the two layers to inform a player of the need for seamless reproduction.

However, the AAPA fails to disclose that the determination of seamless reproduction is based on a sequential logical sector order of the first and second cells that are on different layers.

Yoshimura discloses a recording apparatus for recording information so as to carry out seamless reproduction when switching a recording layer of an optical disk having a double-layer structure.

Yoshimura fails to disclose the determination of seamless reproduction being based on a sequential logical sector order of the first and second cells that are on different layers.

A claimed invention is prima facie obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations. The Court in *KSR v. Teleflex* (citation omitted) has held that the teaching, suggestion and motivation test (TSM) is merely to be used as a helpful hint in determining obviousness and a bright light application of such a test is adverse to those factors for determining obviousness enumerated in *Graham v. John Deere* (i.e., the scope and content of the prior art, the level of ordinary skill in the art, the

differences between the claimed invention and the prior art and objective indicia of non-obviousness) (citation omitted).

In this case, the combination of the cited references fails to disclose a material element recited in claims 1and 4, as neither of the cited references provides any teaching regarding determining a sequential logical numbering of data that is on different layers, as is recited in the claims . Thus, the difference between the prior art and the subject matter claimed is significant and each of the aforementioned claims is not rendered obvious by the combination of the cited references.

With regard to the rejection of the remaining claims, each of these claims depends from one of the independent claims and, hence, are also not rendered obvious by the cited references by virtue of their dependency upon an allowable base claims.

For the amendments made to the claims and for the arguments presented herein, applicant submits that the rejections of the claims have been overcome and respectfully requests that the rejections be withdrawn. The issuance of Notice of Allowance in this matter is respectfully requested.

Applicant denies any statement, position or averment stated in the Office Action that is not specifically addressed by the foregoing. Any rejection and/or points of argument not addressed are moot in view of the presented arguments and no arguments are waived and none of the statements and/or assertions made in the Office Action is conceded.

Applicant makes no statement regarding the patentability of the subject matter recited in the claims prior to this Amendment and has amended the claims solely to facilitate expeditious prosecution of this patent application. Applicant respectfully reserves the right to pursue claims, including the subject matter

encompassed by the originally filed claims, as presented prior to this Amendment, and any additional claims, in one or more continuing applications during the pendency of the instant application.

In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the attorney at the telephone given below.

Respectfully submitted,

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Date: April 14, 2010

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